UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,949	08/05/2002	Benoist Sebire	NOKI14 -00009	8795

43829 7590 03/19/2007

ROBERT M BAUER, ESQ.
LACKENBACH SIEGEL, LLP
1 CHASE ROAD
SCARSDALE, NY 10583

EXAMINER	
AHMED, SALMAN	

ART UNIT	PAPER NUMBER
2616	

MAIL DATE	DELIVERY MODE
03/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/937,949	Applicant(s) SEBIRE ET AL.	
	Examiner Salman Ahmed	Art Unit 2616	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 2/7/2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

HASSAN KIZOU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

Continuation of 11. does NOT place the application in condition for allowance because:
Applicant's arguments see pages 1-2 of the Remarks section, filed 2/7/2007, with respect to rejections of claims have been fully considered and are not persuasive.
Applicant argues (page 1) that applicants' arguments filed on October 18, 2006
that the Tran patent would not motivate one of ordinary skill in the art to modify the Dent patent so as to arrive at the claimed invention. Applicant argues that the Response to Arguments section does not merely respond to applicants' arguments. It twice attempts to introduce a new grounds of rejection that: 1) is irrelevant to the issue of whether the Tran patent would have motivated one of ordinary skill in the art to modify the Dent patent; 2) is not an appropriate rejection of the claims; or 3) can not properly be made final.

However, Examiner respectfully disagrees with the assertions. No new grounds of rejections were introduced in the Final Office Action dated 11/7/2006. The Examiner did not introduced any new prior art to reject the claims. Proper responses were submitted in response to Applicant's arguments on the Remark Section dated 10/18/2006. As such a proper Final Rejection was issued.

Applicant argues (page 2 paragraph 1) that Applicants' arguments of October 18, 2006 necessarily only addressed the rejection that was made in the previous Office Action (that one of ordinary skill in the art would have been motivated by the Tran patent to modify the Dent patent such that the resulting combination would read on the claimed invention). Applicant further argues, a true response to applicants' arguments would likewise only address applicants' traversal of the assertion of motivation in the rejection.

Examiner respectfully submits that the Examiner indeed addressed Applicant's arguments related to one of ordinary skill in the art would have been motivated by the Tran patent to modify the Dent patent such that the resulting combination would read on the claimed invention. In addition to, KSR INTERNATIONAL CO., PETITIONER v. TELEFLEX INC., ET AL. (irrespective of whether, such citation is proper and/or relevant or not), Examiner further responded in the Final Office Action dated 11/7/2006 by submitting that Tran in the same field of endeavor teaches (column 1 lines 35-45) subscriber units may attempt to increase efficiency for a wireless system that is primarily intended for circuit-switched traffic by using excess system capacity for packet-switched data services via similar subscriber unit equipment. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Dent's system/method by incorporating the concept of using excess system capacity in a TDMA system for packet-switched data services as taught by Tran. The motivation is that (as suggested by Tran, column 1 lines 35-45) Packet data provides more network robustness due to path independence and the routers' ability to select alternative paths in the event of network node failure. Packet switching, therefore, allows for more efficient use of the network lines. Packet technology offers the option of billing the end user based on amount of data transmitted instead of connection time. If the end user's application has been designed to make efficient use of the air link, then the number of packets transmitted will be minimal. If each individual user's traffic is held to a minimum, then the service provider has effectively increased network capacity. Examiner further added that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art at the time the invention was made. See In re Keller 642 F.2d 413, 208 USPQ 871 (CCPA 1981).
Applicant further argued (see page 11 second paragraph of October 18, 2006 Applicant's Remark) that Dent does not consider that the expected efficiency gains may not be fully realized because of a mismatch in the number of circuit switched connections requesting a half rate channel at any one time; Tran similarly does not recognize or address this problem. Applicant argued since Tran does not disclose part rate channels for packet switched communications, even if the skilled person were aware of this problem, Applicant argued Tran would not suggest all of the features recited in claims 43 and 75. Applicant further argues neither Dent nor Tran contains any suggestion that would prompt one of ordinary skill in the art to disregard the differences between circuit switched and packet switched connections (as described above) and implement a communication system having modes of operation in which a combination of full rate and part rate channels are allocated to circuit switched and packet switched Communications as recited in the claims 43. In response Examiner submitted that Examiner respectfully disagreed with these assertions. The claimed limitations do not reflect what the Applicant has argued above. The claims do not cite limitations related to the expected efficiency gains being not fully realized because of a mismatch in the number of circuit switched connections requesting a half rate channel at any one time. As such any response to arguments related to "the expected efficiency gains being not fully realized because of a mismatch in the number of circuit switched connections requesting a half rate channel at any one time" is moot.
Applicant further argues (see page 2, last paragraph) that Applicants have been afforded no opportunity to file a complete response to this new grounds of rejection, including any amendments that it may see as appropriate. However, Examiner respectfully disagrees with such assertion. No new ground of rejections have been introduced in the Final Office Action dated 11/7/2006. The Examiner did not introduced any new prior art to reject the claims. Proper responses were submitted in response to Applicant's arguments on the Remark Section dated 10/18/2006. As such a proper Final Rejection was issued.
To summarize, Dent teaches the limitations in a circuit switched environment. Dent does not teach packet switch environment. Tran teaches packet switched environment. It would have been obvious to one of ordinary skilled in the art to combine Dent and Tran. Specifically, Dent teaches a telecommunications system comprising a first station adapted to communicate with a second station over a wireless channel (see col. 1, lines 9-16), data being carried over the wireless channel in superframes (see Fig. 2), each superframe comprising a plurality of frames (see col. 5, lines 9-49) and each frame comprising a plurality of timeslots (see col. 12, lines 14-25); the system having: a first mode of operation in which a full rate data channel for circuit switched communications (see Fig. 11, col. 19, lines 58-66, PSTN means circuit switched communications) is defined by an allocation to that data channel (see col. 2, lines 8-27) of corresponding time slots in each frame (see col. 18, lines 44-60); a second mode of operation in which two half rate data channels (see col. 1, lines 53-61, col. 18, lines 44-60) for circuit switched, communications are defined by an allocation to each of two data channels (see col. 2, lines 8-27) of an equal number of corresponding time slots of frames in each superframe (see col. 1, lines 53-61, col. 18, lines 44-60); a third mode of operation in which four quarter rate data channels for circuit switched communications are defined by the allocation to each of those data channels (see col. 2, lines 8-27) of an equal number of corresponding time slots of frames in each superframe (see col. 6, lines 38-65, "when factor is 4, frame-length/slot is 32 means quarter rate 1/4" and col. 15, line 53-to-col. 16, line 7). Dent does not explicitly teach a first mode of operation and a second mode of operation (cited in the claim as fourth mode and fifth mode respectively) is being done in a packet switched communication as well. Tran in the same field of endeavor teaches (column 1 lines 35-

45) subscriber units may attempt to increase efficiency for a wireless system that is primarily intended for circuit-switched traffic by using excess system capacity for packet-switched data services via similar subscriber unit equipment. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Dent's system/method by incorporating the concept of using excess system capacity in a TDMA system for packet-switched data services as taught by Tran. The motivation is that (as suggested by Tran, column 1 lines 35-45) Packet data provides more network robustness due to path independence and the routers' ability to select alternative paths in the event of network node failure. Packet switching, therefore, allows for more efficient use of the network lines. Packet technology offers the option of billing the end user based on amount of data transmitted instead of connection time. If the end user's application has been designed to make efficient use of the air link, then the number of packets transmitted will be minimal. If each individual user's traffic is held to a minimum, then the service provider has effectively increased network capacity.